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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/926,774	12/18/2001	Rudolf Ritter	217092US	1457
22850 7590 07/23/2007 OBLON, SPIVAK, MCCLELLAND, MAIER & NEUSTADT, P.C. 1940 DUKE STREET ALEXANDRIA, VA 22314			EXAMINER O STEEN, DAVID R	
			ART UNIT 2623	PAPER NUMBER
			NOTIFICATION DATE 07/23/2007	DELIVERY MODE ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

09/926,774

Applicant(s)

RITTER ET AL.

Examiner

David R. O'Steen

Art Unit

2623

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 28 June 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.


**ANDREW Y. KOENIG
PRIMARY PATENT EXAMINER**

Continuation of 11. does NOT place the application in condition for allowance because: In the Remarks received by the Office on June 28, 2007, the applicant further traverses the rejections made by the examiner in the Office Action mailed on March 27, 2007. Specifically, the applicant argues that Scarampi only teaches detecting light from a television reflected from a viewer's eyes and that Scarampi does not use headsets for monitoring purposes. Furness, the applicant states, deals with a head-mounted retinal display that also detects the user's eye movements. On page 3 of the Remarks, the applicant states that for the above reasons the two inventions teach away from each other and cannot be combined to meet the limitations of the applicant's invention, as described in Claim 1. The examiner respectfully disagrees. The examiner relies on the disclosure of Furness to teach a virtual retinal device that projects video data and tracks the user's line of sight, among other things (please see Page 3 of Office Action mailed on March 27, 2007 for more details). To teach the limitations that viewing data be transferred to a central unit to be processed, the examiner relies on Scarampi. Despite the fact that Scarampi does teach that no headset are required (who, after all, would want to wear a headset while watching a standard television?), this does not mean that the two pieces of prior art teach away from each other. Furness already teaches the headset as a means for presenting the image to users as well as all the retina monitoring equipment. Scarampi is relied upon solely to teach sending such data to a central unit for processing. Indeed, there is ample motivation to combine the apparatus and method Scarampi with that of Furness. Monitoring viewer habits allows television and cable companies to track show popularity (page 1, lines 14-19). On page 4 of the Remarks section, the applicant also states neither Furness nor Scarampi teach or suggest determining in a remote central unit, based on the viewing data, picture regions of the reproduced video that have been viewed by the user. Again, the examiner must disagree. Furness does teach the above limitation (the position of the pupil is always recorded and so the region of viewing is also recorded by the device, see cols. 7 and 8, lines 40-67 and 1-2). Again, Scarampi is relied upon by the examiner to teach the limitation of the central unit (please see page 3 and 4 of the Office Action mailed March 27, 2007). As for Claim 15, Furness does teach the limitation of Claim 15 (please see page 6 of the Office Action mailed on March 27, 2007 for more information). For the above reasons, the examiner maintains the U.S.C. 103 rejections of Claims 1 and 8 and their dependent Claims.